



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 21, 1998

Mr. Steven Duskie  
Assistant City Attorney  
Killeen Police Department  
402 North Second Street  
Killeen, Texas 76541-5298

OR98-2000

Dear Mr. Duskie:

You ask that this office reconsider portions of our decision in Open Records Letter No. 98-1418 (1998). Your request for reconsideration was assigned ID# 117757.

Open Records Letter No. 98-1418 determined that the Killeen Police Department (the "department") may not withhold requested information concerning Case No. 94-2060 based on section 552.108 of the Government Code. The ruling also determined that the department may or must withhold portions of the information based on sections 552.101 and 552.130 of the Government Code. You now bring this request for reconsideration in regard to our section 552.108 ruling. You also now ask that we clarify our markings in regard to the applicability of section 552.101 in conjunction with the common-law right to privacy and the informer's privilege.

The requested information concerns a case that resulted in a conviction. You now argue, as you did in your original request, that, pursuant to *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996), section 552.108 applies to "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution crime," *see* Gov't Code § 552.108(a), and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution," *see id* § 552.108(b), regardless of whether the case is open or closed.

In *Holmes*, the supreme court decided that the standard for excepting information under former section 552.108 is not different for open and closed case files. The court held that the plain language of former section 552.108 does not limit its scope to pending investigations or prosecutions or require a governmental body to demonstrate that the release of information concerning a criminal case would unduly interfere with law enforcement. *Holmes v. Morales*, 924 S.W.2d 920 at 924-25 (Tex. 1996). *Holmes* construed former

section 552.108, which is no longer in effect. Thus, former section 552.108 and the *Holmes* interpretation of former section 552.108 are superseded by the amended section.

The amended section contains significant changes. You appear to raise section 552.108(a)(1) and (b)(1), which read as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) *release of the information would interfere with the detection, investigation, or prosecution of crime[.]*

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) *release of the internal record or notation would interfere with law enforcement or prosecution[.]*

Gov't Code § 552.108 (emphasis added). Under these provisions, a governmental body must establish that the release of the information would interfere with law enforcement or prosecution. This office has determined that information relating to a pending criminal investigation or prosecution is one example of information that, if released, would interfere with law enforcement or prosecution. Section 552.108(a)(1) and (b)(1) may apply to information concerning a closed case if the governmental body establishes that its release would interfere with law enforcement or prosecution.

We turn to the markings based on section 552.101. We find that the department may *withhold from disclosure the individual's name wherever it appears in the report.*

In your original request, you asserted that the information at issue "reveals that surveillance techniques, interagency sharing of information, and investigative methods would be disclosed. Such disclosure would restrict future investigation and further limit law enforcement agencies . . . from preventing, deterring, and prosecuting future criminal acts." In your request for reconsideration, you essentially advance the same arguments. This office has stated that the release of routine investigative procedures and commonly known investigative techniques would not unduly interfere with law enforcement and crime prevention. *See* Open Records Decision No. 216 (1978) (construing predecessor provision of section 552.108). We have considered your arguments and conclude that the department has not established that the release of the information would interfere with law enforcement or prosecution. We, therefore, affirm our ruling in Open Records Letter No.98-1418 (1998).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/mjc

Ref.: ID# 117757

Enclosures: Submitted documents

cc: Mr. Troy Tuggle  
133 Wolfe Rd. B  
Copperas Cove, TX 76522  
(w/o enclosures)